

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-248

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, DIRECTING THE CITY ATTORNEY TO PROCEED WITH APPEALING THE RULING BY THE THIRD DISTRICT COURT OF APPEAL IN FLORIDA RETAIL FEDERATION, INC. ET AL. V. THE CITY OF CORAL GABLES, FLORIDA, THROUGH THE FLORIDA SUPREME COURT.

WHEREAS, acknowledging the significant harmful effects of expanded polystyrene on the environment and finding the regulation of expanded polystyrene necessary for the preservation of our environment and the public health, safety, and welfare of City of Coral Gables residents and visitors, in late 2015, the City began the process of regulating this product; and

WHEREAS, on December 8, 2015, the City Commission adopted, on first reading, Ordinance 2016-08; and

WHEREAS, the City engaged the business community and delayed second reading of the ordinance in order to allow time for input from retailers, the Coral Gables Chamber of Commerce, and the Business Improvement District; and

WHEREAS, on February 9, 2016, the City Commission adopted Ordinance 2016-08, on second reading, providing for an immediate effective date but stipulating that enforcement would not begin until August 9, 2016 or 180 days after second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition; and

WHEREAS, Ordinance 2016-08 prohibits: (1) city vendors/contractors from, selling or using expanded polystyrene within the City or in completing their duties under contract with the City, (2) special event permittees from using expanded polystyrene articles during events, and (3) generally prohibits the sale or use of expanded polystyrene by businesses in the City; and

WHEREAS, on July 18, 2016, the Florida Retail Federation, Inc. and Super Progreso, Inc. ("Plaintiffs") filed a Complaint against the City of Coral Gables for declaratory judgment and injunctive relief and seeking a declaration that Ordinance 2016-08 was invalid as preempted by Section 500.90, F.S.; and

WHEREAS, on February 27, 2017, Eleventh Judicial Circuit Judge Jorge E. Cueto granted the City's Motion for Summary Judgment finding (1) Section 500.90, F.S. (preempting the regulation of expanded polystyrene) violates the Miami-Dade Home Rule Amendment, is an

impermissible special law aimed at the City of Coral Gables, violates the doctrine of non-delegation of powers, and is arbitrary and capricious, and (2) Sections 403.708(9) and 403.7033, F.S. (preempting the regulation of single-use plastic bags) unconstitutionally vague; and

WHEREAS, as a result of the Court's ruling finding the preemption of single-use plastic bags unconstitutional, on May 9, 2017, the City Commission, again finding that the regulation is necessary for the preservation of our environment and the public health, safety, and welfare of City residents, visitors, and future generations, adopted Ordinance 2017-13 providing an immediate effective date, but stipulating that enforcement would not begin for one year after second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition; and

WHEREAS, Ordinance 2017-13 prohibits (1) special event permittees from using single-use plastic bags during events, and (2) generally prohibits the use of single-use plastic bags by businesses in the City; and

WHEREAS, on March 10, 2017, Plaintiffs appealed the Circuit Court's order, on March 13, 2017, the State of Florida joined Plaintiffs in the appeal, and in December 2017, oral argument was held before a panel of the Third District Court of Appeals; and

WHEREAS, on August 14, 2019, the Third District Court of Appeal found that the trial court erred in concluding that the three statutes are unconstitutional and reversed the lower court's ruling; and

WHEREAS, the City remains wholly committed to protecting the environment and Home Rule; and

WHEREAS, the City Commission wishes to appeal the ruling by the Third District Court of Appeals through the Florida Supreme Court;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission hereby directs the City Attorney to proceed with appealing the ruling by the Third District Court of Appeals through the Supreme Court.

SECTION 3. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-EIGHTH DAY OF AUGUST, A.D.,
2019.


(Moved: Mena / Seconded: Lago)
(Yeas: Lago, Mena Fors., Keon, Valdes-Fauli)
(Unanimous: 5-0 Vote)
(Agenda Item: J-1)

APPROVED:



RAÚL VALDÉS-FAULI
MAYOR

ATTEST:



BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



MIRIAM SOLER RAMOS
CITY ATTORNEY